



**Republic v Bett (Criminal Case E011 of 2021)  
[2024] KEHC 5102 (KLR) (13 May 2024) (Sentence)**

Neutral citation: [2024] KEHC 5102 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
CRIMINAL CASE E011 OF 2021**

**F GIKONYO, J  
MAY 13, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**GIBSON KIPLANGAT BETT ..... ACCUSED**

**SENTENCE**

1. The accused was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. Upon a Plea Bargain Agreement being entered, the charge was then reduced to manslaughter;
3. Following a Plea Bargain Agreement filed in court on 26/09/2023 and accepted by the court on 22/11/2023 upon it being satisfied that there was a factual and legal basis for the plea agreement, that the accused had understood the contents and that he had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion;
4. The accused was charged with unlawfully killing Mercy Talaam on 09/08/2021 at around 0730 hours at Migwara Village, Meleleo Location in Narok South Sub-county within Narok County; the accused was convicted on his own plea of ‘Guilty’ to the offence of Manslaughter c/s to Section 202 as read with Section 205 of the *Penal Code*;
5. The brief facts are that on the material date, the accused had arrived home at 7:00 pm and found his wife; the deceased having supper with their children. He retired to bed at around 10.00 pm and the deceased requested to sleep in the kitchen with her children alleging that it was very cold. This did not settle well with the accused. It seemed suspicious. At around 3:00 am he went inside the kitchen and found his children sleeping but his wife was not around. This prompted him to wait for her outside in the cold. At around 5.00 am he saw her creeping back into the kitchen. He proceeded to sleep in the main house which was 5 metres away but he could hear the deceased speaking to someone on the



phone. He went to prepare the children for school at around 6.00 am he saw Leshan Nkumum with a *panga* at around 7.00 am he borrowed the *panga* and went back to his compound. Leshan immediately heard screams emanating from the accused's homestead. Ntomuma Nkumum quickly responded to the screams and rushed to the accused's compound which was about 15 meters from his house. Leshan and Ntomuma saw the accused coming out of the kitchen while armed with a *panga* heading towards them. They fled and screamed for help. Members of the public responded. The accused fled the scene. They found the deceased lying in a pool of blood on the floor with deep-cut wounds on the back of the left knee and neck. A blood-stained axe (P Exh 2) was recovered next to the deceased. The body of the deceased was moved to Narok County referral hospital. A post-mortem was conducted on 12/08/2021(P Exh 1.). It was established that the cause of death was a result of hemorrhagic shock due to a deep multiple neck cut wound owing to a sharp object.

6. On record is a pre-sentence report filed in court on 23.02.2024. The accused pleads for leniency. The father of the accused stated that the family has already initiated reconciliation, they took a calf to the homestead of the victim's family and are waiting for clans' men to contribute and hold the final meeting. The victim's family is still emotional. They expressed that they do not recognize the accused as their kin because he never expressed his intentions of settling with their daughter while she was alive. The victim's family strongly opposed any leniency towards the offender and prayed for justice for their own. The local administration spoke highly of the character of the accused. They expressed that the accused safety is not an issue as the reconciliation is still on course. It was reported that the accused had no criminal record.

#### **The prosecution's pre-sentence submissions.**

7. The prosecution urged this court to sentence the accused person to a custodial sentence for deterrence, rehabilitation, and denunciation purposes considering the nature of the offence and the circumstances under which the offence was committed. The prosecution relied on the 2016 Judiciary of Kenya Sentencing Policy Guidelines at page 15 paragraph 4.1 and *Dahir Hussein v Republic* Criminal Appeal No. 1 of 2015; [2015] eKLR.
8. The prosecution urged this court to consider the views of the victims which are well captured in the presentence report. The victims strongly oppose leniency on the sentence to be meted out to the accused person herein. The prosecution relied on Section 329(c) of the *Criminal Procedure Code*, and *Francis Karioko Muruatetu & Another Vs Republic*.
9. In mitigation, the accused submitted that he is first offender; local people speaks highly of him, he is remorseful; reconciliation has commenced between the families; he committed the offence out of fit of rage due to his wife's infidelity act (provocation); entered a plea of guilt; has a young child of 7 years who needs him; is young and needs a chance for rehabilitation through a non-custodial sentence.
10. He cited the case of *R vs. John Nganga Gacheru* [2016], *Abmed Mohammed & 5 others vs. R* [2014] eKLR, *R vs. Isaac Wanjala Murumba* [2021] eKLR, SA case of *Sangweni vs. State* (AR221/09).

#### **Analysis and Determination**

11. Appropriate sentence depends on the facts and circumstances of the case.
12. The relevant penalty law for the offence of manslaughter is Section 205 of the *Penal Code* which states that;

" Any person who commits the felony of manslaughter is liable to imprisonment for life"



13. The section provides for imprisonment for life as the maximum sentence for manslaughter. The sentence is therefore, indicative of the seriousness of the offence, which is an aggravating factor here.
14. It is also relevant aggravating circumstance that the convict used a deadly weapon namely a *panga* in committing the offence.
15. Although he claims that the killing was not premeditated, the facts reveal that, after witnessing his wife creeping back into the compound at about 5.00am, he went back to the main house and pretended to be sleeping, yet, he could hear her speaking on phone. At around 7.00am, he went out and borrowed a *panga* from Leshan and came back to his compound. And, he set upon her with a dangerous weapon, an axe, inflicting deep multiple cut wounds on her knee and neck and killed her. This was not an ordinary fist assault which a man in rage is ordinarily expected to engage his wife. Descending upon a woman with a an axe and inflicting deep cuts on the neck is extremely disproportional in the circumstances of this case. The weapon used and the sheer force applied was intended to cause grievous harm or death. Provocation caused by marital infidelity should never justify use of such disproportionate force and dangerous weapon upon a defenseless woman.
16. Notably, the family of the deceased vowed never to accept him as their in-law for he did not seek to settle whatever issues he had with her during her life. It is the view of the court that, even with great provocation by infidelity of one of the spouses, it is possible to engage proper use of emotional intelligence, and device own peculiar methods of dealing with rage and anger rather than acting unreasonably and killing the other spouse.
17. Be that as it may, the court also considers mitigating factors that, the accused readily pleaded guilty and thus saved on judicial time; also, that the accused expressed his remorse and is deemed to be a first offender; is young and has a young family.
18. In the light of the aggravating and mitigating factors, this court finds that a non-custodial sentence would not be appropriate in the circumstances, and sentences him to fifteen (15) years imprisonment.
19. Given the lenient sentence, the purport of section 333(2) of the [CPC](#) has been considered. The sentence will commence from the date of conviction.
20. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 13<sup>TH</sup> DAY OF MAY, 2024.**

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**F. GIKONYO M.**

**JUDGE**

In the presence of:

Ms. Rakama for DPP

Korir for accused

Accused

Otolo C/A

